IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23-09-2005

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE N. KANNADASAN

WRIT APPEAL NO.1078 OF 2003
and
W.P.No.11415, 17299, 17341,14950, 14951, 17055 of 2003
& 24183 of 2004
and
WAMP.Nos.193 and 3127 of 2005, WPMP.No.29358 of 2004
& WVMP.No.229 of 2005

W.A.No.1078 of 2003

The Music Academy,
Rep. by its Executive Trustee
No.168, TTK Road,
Chennai 600 014. .. Appellant

Vs.

1. Inspector General of Registration,
   Santhome High Road,
   Chennai 600 028.

2. District Registrar of Audit and
   Enquiry Officer, Chennai Central,
   Chennai 600 001.

3. R. Parthasarathy,
   No.14, Madley Road, T.Nagar,
   Chennai 600 017. .. Respondents

W.P.No.11415 of 2003

Nalli N. Kuppuswami Chetti
No.9, Nageswaran Road,
T. Nagar, Chennai 600 017. .. Petitioner

Vs.

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1. Inspector General of Registration,
   Office of the Inspector General
     of Registration,
  Santhome High Road, Santhome,
   Chennai 600 004.

2. District Registrar of
     Societies (Central),
   No.20, Seethamma Road, Alwarpet,
   Chennai 600 018.

3. The Music Academy,
   No.168 (Old No.306), TTK Road,
   Chennai 600 014. .. Respondents

W.P.No.17299 of 2003

Nalli N. Kuppuswami Chetti
No.9, Nageswaran Road,
T. Nagar, Chennai 600 017. .. Petitioner

Vs.

1. The State of Tamil Nadu
   Rep.by Secretary to Government,
   Commercial Taxes Department,
   Fort St. George, Chennai 9.

2. Inspector General of Registration,
   Office of the Inspector General
     of Registration,
  Santhome High Road, Santhome,
   Chennai 600 004.

3. District Registrar of
     Societies (Central),
   No.20, Seethamma Road, Alwarpet,
   Chennai 600 018.

4. The Music Academy,
   No.168 (Old No.306), TTK Road,
   Chennai 600 014. .. Respondents

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W.P.No.17341 of 2003

R. Parthasarathy,
Old No.14/New No.68,
Madley Road, T. Nagar,
Chennai 600 017. .. Petitioner

Vs.

1. The State of Tamil Nadu
   Rep.by Secretary to Government,
   Commercial Taxes Department,
   Fort St. George, Chennai 9.

2. Inspector General of Registration,
   Santhome High Road,
   Chennai 600 028.

3. District Registrar of
   Societies Chennai(Central),
   No.20, Seethamma Road, Alwarpet,
   Chennai 600 018.

4. The Music Academy,
   No.168, TTK Road,
   Chennai 600 014.

5. Mrs. Lakshmi Viswanathan
6. Dr. Mano Bakthavatchalam
7. Mrs. Malathi Rangaswamy
8. M.S. Pattabiraman
9. N. Ramji
10. Dr.V.V. Srivatsa
11. M.S. Venkataraman
12. K.V. Balasubramanian
13. Kala Ramesh Rao
14. N. Kannan
15. L.G. Narayanaswamy
16. D.R. Santhanam
17. S. Swaminathan
18. Uma Mahesh
19. P. Vasanth Kumar
20. S.V. Ramaswamy .. Respondents

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W.P.No.14950 of 2003

The Music Academy,
Rep. by the Executive Trustee,
No.168, TTK Road, Royapettah,
Chennai 600 014. .. Petitioner

Vs.

1. The State of Tamil Nadu
   Rep.by Secretary to Government,
   Commercial Taxes Department,
   Fort St. George, Chennai 9.

2. Inspector General of Registration,
   Santhome High Road,
   Chennai 600 028.

3. R. Parthasarathy,
   Old No.14/new No.68,
   Madley Road, T. Nagar,
   Chennai 600 017.

4. Nalli N. Kuppuswami Chetti
   No.9, Nageswaran Road,
   T. Nagar, Chennai 600 017.

   Respondents 3 & 4 are impleaded
   as per order dt. 1.9.2003 in
   WPMP.Nos.22652 to 22654/03 and
   25149 & 25150 /2003 .. Respondents

W.P.No.14951 of 2003

M.S. Pattabiraman .. Petitioner

Vs.

1. The State of Tamil Nadu
   Rep.by Secretary to Government,
   Commercial Taxes Department,
   Fort St. George, Chennai 9.

2. Inspector General of Registration,
   Santhome High Road,
   Chennai 600 028.

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3. R. Parthasarathy,
   Old No.14/New No.68,
   Madley Road, T. Nagar,
   Chennai 600 017.

   Respondent No.3 is impleaded
   as per order dt. 1.9.2003 in
   WPMP.Nos.22652 to 22654/03 .. Respondents

W.P.No.17055 of 2003

1. V.V. Srivatsa
2. Mano Bakthavatsalam
3. Mrs. Malathi Rangaswami
4. Mrs. Kala Ramesh Rao
5. P. Vasanth Kumar
6. Smt. Uma Mahesh
7. D.R. Santhanam
8. K.V. Balasubramaniyam
9. Mrs. Lakshmi Viswanathan .. Petitioners

Vs.

1. The State of Tamil Nadu
   Rep.by Secretary to Government,
   Commercial Taxes Department,
   Fort St. George, Chennai 9.

2. Inspector General of Registration,
   Santhome High Road,
   Chennai 600 028.

3. R. Parthasarathy,
   Old No.14/new No.68,
   Madley Road, T. Nagar,
   Chennai 600 017.

4. Nalli N. Kuppuswami Chetti
   No.9, Nageswaran Road,
   T. Nagar, Chennai 600 017.

   Respondents 3 & 4 are impleaded
   as per order dt. 1.9.2003 in
   WPMP.No.29524/03 and 25149/2003 .. Respondents

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W.P.No.24183 of 2004

The Music Academy,
No.168 (Old No.306), TTK Road,
Chennai 600 014. .. Petitioner

Vs.

1. The State of Tamil Nadu
   Rep.by Secretary to Government,
   Commercial Taxes Department,
   Fort St. George, Chennai 9.

2. Inspector General of Registration,
   Office of the Inspector General
   of Registration,
   Santhome High Road, Santhome,
   Chennai 600 004.

3. District Registrar of
   Societies (Central),
   No.20, Seethamma Road, Alwarpet,
   Chennai 600 018.

4. R. Parthasarathy,
   Old No.14/new No.68,
   Madley Road, T. Nagar,
   Chennai 600 017.

5. Nalli N. Kuppuswami Chetti
   No.9, Nageswaran Road,
   T. Nagar, Chennai 600 017.

   Respondents 4 & 5 impleaded as
   per order dt.3.1.2005 in WPMP.
   Nos.35019 & 35708 of 2004 .. Respondents

Writ Appeal No.1078 of 2003 is filed under clause 15 of the Letters Patent against the order dated 24.1.2003 passed by a learned single Judge in W.P.No.15900 of 2002.

W.P.No.11415 of 2003 has been filed under Article 226 of the Constitution of India for the issuance of writ of Mandamus directing 1st and 2nd respondents to take up appropriate action in accordance with the provisions of the Tamilnadu Societies Registration Act, 1975 pursuant to the letter of the 1st respondent dated 19.3.2002 in No.51458/II/2001-01 and reports of the 2nd respondent dated 14.1.2003 in Nos.12850/E.1/2002 and 1285/E.1/2002.

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W.P.No.17299 of 2003 has been filed under Article 226 of the Constitution of India for the issuance of writ of Mandamus directing 1st, 2nd and 3rd respondents to forbear the 4th respondent from convening the Annual General Meeting of the Music Academy, Madras on 29th June, 2003 or any other day or convening/holding any other meetings of the executive committee until the assumption of office of a validly constituted committee in terms of Section 15 of the Tamil Nadu Societies Registration Act, 1975.

W.P.No.17341 of 2003 has been filed under Article 226 of the Constitution of India for the issuance of writ of Mandamus directing the respondents 2 and 3 to take appropriate action against the respondents 5 to 20 who are acting in violation of the provsions of the Tamil Nadu Societies Registration Act,1975 and the Rules framed thereunder, and consequently to forbear the respondents 5 to 20 and persons claiming powers under the respondents 5 to 20 from, in any way, meddling with the affairs of the 4th respondent Society, calling themselves as Office-Bearers, either by convening and conducting any Executive Committee meeting or Annual General Meeting of the 4th respondent, either on 29.6.2003 or on any other date.

W.P.No.14950 of 2003 has been filed under Article 226 of the Constitution of India for the issuance of writ of Certiorarified Mandamus calling for the records of the 1st respondent ending with the Show-Cause Notice No.17324/M/2002-10 dt.08-05-2003 and quash the same and further directing the respondent not to interfere with the working of the petitioner.

W.P.No.14951 of 2003 has been filed under Article 226 of the Constitution of India for the issuance of writ of Certiorarified Mandamus calling for the records of the 1st respondent culminating in the Show-Cause Notice No.17324/M/2002-10 dt.08-05-2003 and quash the same and further directing the respondents not to interfere with the working of the Music Academy.

W.P.No.17055 of 2003 has been filed under Article 226 of the Constitution of India for the issuance of writ of Certiorarified Mandamus calling for the records of the 1st respondent culminating in the Show-Cause Notice No.17324/M/2002-10 dt.08-05-2003 and quash the same and by directing the respondents not to interfere with the working of the Music Academy.

W.P.No.24183 of 2004 has been filed under Article 226 of the Constitution of India for the issuance of writ of Certiorari calling for the records of the third respondent culminating in the order No.7836/E.1/2004 dated 24.6.2004, quash the same.

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For Appellant in WA.1078/03	:	Mr.L. Sriram Panchu Senior Advocate for Mr.T. Mohan
For Respondents 1-2	:	Mr.R. Muthukumarasamy Addl. Advocate General Assisted by Mr.R. Lakshminarayanan, Govt. Advocate
For Respondent-3	:	Mr.T.V. Ramanujam Senior Advocate for Mr.T.V. Krishnamachari
For Petitioner in WP.11415/03	:	Mr.T.R. Mani Senior Advocate for Mr.T.M. Hari Haran
For Respondents 1-2	:	Mr.R. Muthukumarasamy Addl. Advocate General Assisted by Mr.R. Lakshminarayanan, Govt. Advocate
Respondent-3	:	Mr.L. Sriram Panchu Senior Advocate for Mr.T. Mohan
For Petitioner in WP.17299/03	:	Mr.K. Chandru Senior Advocate for Mr.R. Yashod Vardhan
For Respondents 1 to 3	:	Mr.R. Muthukumarasamy Addl. Advocate General Assisted by Mr.R. Lakshminarayanan, Govt. Advocate
Respondent-4	:	Mr.T.R.Rajagopalan, Sr Advocate for Mr.T.M. Pappiah
For Petitioner in W.P.17341/03	:	Mr.T.V. Ramanujam Senior Advocate for Mr.T.V. Krishnamachari
For Respondents 1 to 3	:	Mr.R. Muthukumarasamy Addl. Advocate General Assisted by Mr.R. Lakshminarayanan, Govt. Advocate
Respondent-4	:	Mr.L. Sriram Panchu Senior Advocate for Mr.T. Mohan

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Respondents 6,7,10 to 13, 15, 16, 18 to 20	:	Mrs. Rita Chandrasekar for M/s Aiyar & Dolia
Respondents 5,8,9 and 14:		No Appearance
For Petitioner in W.P.14950/03	:	Mr.T.R. Rajagopalan Senior Advocate for Mr.T.M. Pappiah
For Respondents 1& 2	:	Mr.R. Muthukumarasamy Addl. Advocate General Assisted by Mr.R. Lakshminarayanan, Govt. Advocate
Respondent-3	:	Mr.T.V. Ramanujam Senior Advocate for Mr.T.V. Krishnamachari
Respondent-4	:	Mr.Aravind P. Dattar Senior Advocate for Mr.R. Yashod Vardhan
For Petitioner in WP.14951/2003	:	Mr.B. Harikrishnan
For Respondents 1 & 2	:	Mr.R. Muthukumarasamy Addl. Advocate General Assisted by Mr.R. Lakshminarayanan, Govt. Advocate
Respondent-3	:	Mr.T.V. Ramanujam Senior Advocate for Mr.T.V. Krishnamachari
For Petitioner in WP.No.17055/03	:	Mrs. Rita Chandrasekar for M/s. Aiyar & Dolia
For Respondents 1 & 2	:	Mr.R. Muthukumarasamy Addl. Advocate General Assisted by Mr.R. Lakshminarayanan, Govt. Advocate
For Petitioner in WP.24183/2004	:	Mr.T.R. Rajagopalan Senior Advocate for Mr.T. Mohan

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For Respondents 1 to 3 : Mr.R. Muthukumarasamy
Addl. Advocate General
Assisted by
Mr.R. Lakshminarayanan,
Govt. Advocate

Respondent-4 : Mr.T.V. Ramanujam
Senior Advocate for
Mr.T.V. Krishnamachari

Respondent-5 : Mr.Aravind P. Dattar
Senior Advocate for
Mr.J. Srinivasa Mohan

- - -

COMMON JUDGMENT

P.K. MISRA, J

The Music Academy, Madras, a famous Institute known as such in the rest of the country for its promotion of music and culture and more in news, presently within Tamil Nadu or may be Chennai, because of the legal squabbles, was registered as a Society under the Societies Registration Act, 1860 on 21.8.1929, 75 years back. As per the Memorandum of Association and Rules and Regulations, which were registered on the said date, the Governing Body called the Executive Committee consisted of one President, two or more Vice Presidents, two Trustees, two Joint Secretaries, one Treasurer and ten other Members. The registered Rules and Regulations provided that the members of the Executive Committee are to be elected at the Annual General Body Meeting and they have to hold office until fresh office bearers are elected. In 1953, the amended bye-laws provided that the term of the office bearers would be three years. On 22.4.1978, the Tamil Nadu Registration Act (Act 27 of 1975), hereinafter referred to as "the State Act", came into force.

2. Two aspects are hotly contested relating to interpretation of the provisions contained in such Act vis-a-vis the provisions contained in the bye-laws of the Music Academy, which shall be noticed in due course.

3. For convenience, the participants, in the "Musical Drama / Legal Battle" pertaining to Music Academy would be referred to by their names or designations.

4. It is claimed on behalf of the Music Academy that the new Memorandum of Association and bye-laws were adopted at the Extra-ordinary General Body Meeting of the Society held on 21.1.1979. The applicability/validity of such amended bye-laws are being called in question by some members and/or the office bearers or even the statutory

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authorities. As per such bye-laws, there is a provision for appointment of Trustees by nomination for six years. There is a further provision that the President and four Secretaries would be Ex-officio trustees during their three years term. There is no dispute that the President and the four Secretaries are to be elected in the Annual General Body Meeting. One of the questions raised is the validity of the provision regarding appointment of Trustees by nomination and not by election and the other dispute relates to the term of such nominated trustees, which is said to be six years. The Board of Trustees, as per such provision, is required to appoint one of the Trustees as Executive Trustee, who would be in charge of the day-to-day affairs and would represent the Academy and all its proceedings.

5. Bye-laws 12 and 19 provide that the elected Managing Committee is to act subject to the powers vested in the Board of Trustees. This aspect is also in dispute as it is the contention of some of the members that the Managing Committee cannot efface itself by creating a superior authority over itself. The bye-laws as amended on 21.1.1979 have been filed with the Registrar on 7.2.1979. However, amended bye-laws have not been registered. It is, however, not in dispute that in spite of non-registration of such amended bye-laws, the affairs of the Music Academy were being managed in accordance with such provisions and the elections to various office bearers and nomination of trustees were taking place accordingly.

6. As per the resolution in Extra-ordinary General Body Meeting on 28.5.1989, clause 13(2) of the bye-law to the following effect "No member who has not completed 3 years membership, will be eligible to hold any position either by election or by co-option in the Executive Committee/Governing Body, was included. However, such amendment had not been registered with the Registrar. Subsequently, a letter has been addressed to the Registrar to condone the delay and to register the amendments. In Extra-ordinary General Body Meeting of the Music Academy on 31.10.1992, certain other amendments were adopted. By such amendments, Membership fee payable by the Patrons, Donors, Life-members and ordinary Members were purported to be increased. Such amendments were also never formally registered. However, there is no dispute that on the basis of such enhanced membership fee, many persons have been admitted to the Music Academy as patrons, donors, life members and ordinary members. It is stated that between 1993 and 1998, three notices dated 20.9.1993, 17.2.1997 and 22.5.1998 had been sent by the Additional Inspector General, the Sub-Registrar and the District Registrar respectively to the Music Academy, which remain unanswered. On 24.6.2001, at the General Body Meeting, elections were held and the persons who are presently in charge were elected as office bearers. The election dated 24.6.2001 was on the basis of the bye-laws purportedly amended in 1989 which made a nascent member ineligible for holding any post. At that stage, R. Parthasarathy, a life Member, the petitioner in W.P.No.17341 of 2003, had written two letters dated 28.8.2001 to the

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District Registrar seeking for certified copies of the bye-laws and the certified copy of Form-VII (list of office bearers), particularly, he wanted Memorandum of Bye-laws adopted by the Extra-ordinary General Body Meeting held on 21.1.1979, amendment to bye-law dated 28.5.1989 and amendment to bye-law dated 31.5.1992. Apparently at that stage it was discovered that amendments to the bye-laws had not been registered and pursuant to the query from the District Registrar, the Music Academy through its Secretary gave reply dated 5.11.2001, enclosing several documents, including Members List in Form VI and Form VII and upto date list of members as on 31.5.2001. In such letter, it was also prayed for condoning the delay in filing the documents and the Secretary further assured that the Academy would be prompt in filing the returns in future. Subsequently, the Music Academy on 11.1.2002 wrote a letter to the Inspector General of Registration requesting for condonation of delay in filing the annual returns for the years 1989 to 2001.

7. At that stage, C.S.No.487 of 2001 was filed by another member Mr.P. Venugopal against the Music Academy with an injunction petition numbered as O.A.No.556 of 2001 in Appln.No.2890 of 2001 in C.S.No.487 of 2001. Prayer in the suit was for a declaration that the Bye-laws 12(3), 19, 26, 35 and 36 were void being contrary to the provisions of the Tamil Nadu Societies Registration Act, 1975 and for a mandatory injunction directing the Music Academy to bring the bye-laws of the Society in consonance with the provisions of the Act, and for several other allied reliefs.

8. O.A.No.556 of 2001, an application under Order 39 Rule 1 & 2 CPC., arising from such suit was dismissed by a learned single Judge by order dated 28.9.2001. O.S.A.Nos.316 & 317 of 2001 filed by such plaintiff were disposed of by the Division Bench with a request to the learned Judge to dispose of the Civil Suit, C.S.No.487 of 2001 itself on priority basis, untrammelled by the observations contained in the interim order, treating the same as purely tentative. It is not in dispute that subsequently such suit has been dismissed as withdrawn.

9. It appears that the Inspector General of Registration initiated some suo motu enquiry into the affairs of the Music Academy and at that stage many papers were submitted with request for condonation of delay. On 29.1.2002, the District Registrar, who had been called upon to inquire, wrote a letter to the Inspector General indicating about certain constitutional, financial and functional irregularities in the running of the Music Academy. In such report, inter alia, the following irregularities were pointed out :-

(a) Amendment dated 28.5.1989 had not been registered;

(b) The Music Academy had not filed with the Registrar of Societies any amendment said to have been made on 31.10.1992 and has been receiving the enhanced subscription for the past 9 years.

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(c) The bye-laws filed on 7.2.1979 with the Registrar were in contravention of the provisions of the Tamil Nadu Societies Registration Act.

(d) The Music Academy had not filed Form VI (Register of Members) as per Rule 16 and Form VII (Notice of Change among the Members of the Society) as per sub-rule (2) of Rule 17 of the Tamil Nadu Societies Registration Rules, 1978.

10. Thereafter, on 27.2.2002, Form VI was submitted by the Music Academy. On 19.3.2002, the Inspector General of Registration wrote to the Secretary of the Music Academy, enclosing a copy of the enquiry report. It was indicated :

> "... In the report, various irregularities including non-filing of returns, inconsistency of bye-laws to the provisions of the Act, enforcement of amended bye-laws without getting it registered with District Registrar, financial mismanagement and about the activities of the board of Trustees have been pointed out.
>
> Hence, as provided under sub section 9of section 36 of the Act, I hereby request you to set right lapses mentioned in the report within two months from the date of receipt of this letter."

11. W.P.No.15900 of 2002 was filed by the Music Academy for quashing the enquiry report and the notice dated 19.3.2002, under which such enquiry report dated 29.1.2002 had been enclosed. Such writ petition was dismissed by the learned single Judge by order dated 24.1.2003, which has given rise to the present Writ Appeal No.1078 of 2003.

12. It appears that in the meantime P. Venugopal and R.Parthasarathy had filed W.P.Nos.20777 and 20778 of 2002. In W.P.No.20777 of 2002, the prayer was to forbear the District Registrar from in any way recording the change in the members of the Executive Committee of the Music Academy said to have taken place on 24.6.2001, filed in Form No.VII of the Rules framed under the Tamil Nadu Societies Registration Act, 1975. Such writ petition was disposed of on 18.9.2002 directing the District Registrar of Societies to consider the matter without expressing any opinion on the validity of the election.

13. In W.P.No.20778 of 2002, the prayer was for the issuance of a writ of Mandamus or direction to forbear the District Registrar from taking on record any register of members filed by the Music Academy, under Sections 14 & 15 of the Tamil Nadu Societies Registration Act, 1975 read with the Rules framed thereunder without verifying whether the register of members of the Music Academy has been finalised by properly classifying its members in accordance with the legally existing bye-law of the third respondent. Without expressing any opinion the questions raised, the learned single Judge disposed of the

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writ petition by directing the District Registrar to consider the matter after giving notice.

14. On 14.1.2003, the District Registrar, on the basis of the direction issued by the High Court dated 18.9.2002, observed that amendment to bye-laws had not been submitted within the stipulated period as contemplated under Section 12 of the Act, and therefore observed:-

> "... bringing into effect an unregistered Bye-law is contrary to Section 12(3) and therefore the Form VII filed seeking to register the change among the members of the Executive Committee elected on 24.6.2001 cannot be taken on file. Further, it is hereby informed that the society alone is responsible for the consequences arising out of this return."

Such order of the District Registrar has not been specifically challenged. However, N. Kuppuswami Chetti has filed W.P.No.11415 of 2003 seeking for writ of mandamus directing the Inspector General of Registration and the District Registrar to take appropriate action against the Music Academy pursuant to the letter dated 19.3.2002 and report of enquiry dated 14.1.2003.

15. On 13.2.2003, the President of the Music Academy wrote to the District Registrar that filing of revised Form-VII was not required and there was no provision authorising the District Registrar to return the Form even if filed beyond the stipulated period as such filing was only for intimation. However, subsequently, on 1.4.2003, the Music Academy filed an application for exemption under Section 54 of the Tamil Nadu Societies Registration Act, explaining various circumstances and seeking for condonation of delay in filing the annual accounts and Form-VII and also the delay in registering the amendments passed in the General Body Meetings dated 28.5.1989 and 31.10.1992 and also seeking exemption in respect of other provisions of the Act. It is stated that such application has been returned vide letter dated 13.11.2003 to the Music Academy on the footing that the writ appeal and other connected writ petitions are pending before the High Court and, therefore, the application cannot be considered.

16. Subsequently, on 8.5.2003, the Government issued show cause notice under Section 34-A for supersession of the Committee and appointment of Special Officer. Such show cause notice has been challenged by the Music Academy in W.P.No.14950 of 2003 and some other members of the Executive Committee in W.P.Nos.14951 & 17055 of 2003. In the said writ petitions, while entertaining the matters, the High Court has observed that it would be open to the Music Academy to submit reply to the show cause without prejudice to the contentions raised in the writ petitions and it is stated that the Music Academy had furnished certain particulars explaining various allegations.

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17. While the matter stood thus, the Music Academy had convened an Annual General Body Meeting but, at that stage, N.Kuppusami Chetti, filed W.P.No.17299 of 2003 praying for writ of Mandamus directing the State Government, Inspector General of Registration and the District Registrar to forbear the Music Academy from convening the Annual
General Body Meeting until assumption of a validly constituted Committee in terms of section 15 of the Act.

18. W.P.No.17341 of 2003 has been filed by R.Parthasarathy for similar relief against the Music Academy as well as the office bearers to forbear them from meddling with the affairs of the Society. In these two writ petitions, an interim order of injunction dated 25.6.2003 was passed restraining the Executive Committee members from convening Annual General Body Meeting on 29.6.2003 or any other date. On 4.9.2003, however, a further order in W.P.No.17055 of 2003 and in other connected writ petition was passed permitting the Executive Committee to act till 3.2.2004 to conduct music festival during the year 2003, subject to certain conditions.

19. The petitioner R. Parthasarathy had also filed W.P.No.15079 of 2004 as his representation to the Registrar was not disposed of and such matter was disposed of by one of us (P.K. Misra, J) on 2.6.2004 directing the Registrar to dispose of the representation dated 12.5.2004 within six weeks. After the said order was passed, the District Registrar has passed an order on 24.6.2004 holding that 1979 amendments had not been registered and, therefore, such amendments cannot hold the field and the proceedings are not in conformity with Section 12(1) and Rule 49(2) and, therefore, the original Memorandum of Association of 1929 alone is in force. W.P.No.24183 of 2004 has been filed against the said order. While W.A.No.1078 of 2003 and other writ petitions were being heard, the records in W.P.No.24183 of 2004 were also called for and such matters are being disposed of under the present judgment.

20. In the above maze of numerous litigations and counter litigations, the basic questions which are required to be considered are as follows :-

(1) Whether the bye-laws purported to have been amended in 1979, 1989 and 1992 can be considered to be valid and effective and, whether the Executive Committee elected in 2001 on the basis of election based on such Bye-Laws can be said to be a properly constituted Executive Committee.

(2) Whether the observation made by the District Registrar that only Memorandum of Association of 1929 is valid, is correct or such observation is required to be modified in any manner ? and

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(3) Whether any interference is called for in the matter relating to issuance of show cause notice under Section 34-A of the Act ?

(4) Whether the order impugned in W.A.No.1078 of 2003 is sustainable ?

21. We have heard Mr.T.R. Rajagopalan and Mr. Sriram Panchu, Senior Counsels, on behalf of the Music Academy and Members of the extant Executive Committee, Mr. Muthukumaraswamy, the learned Additional Advocate General for the State and other subordinate officials, Mr.K. Chandru, Mr.T.R. Mani Senior Counsels for N. Kuppuswami Chetti and Mr. T.V. Ramanujam, Senior Counsel for R. Parthasarathy respectively. Almost all the learned counsels appearing for the warring parties in one voice submitted that most of the evils afflicting the Music Academy, which are snow balling with the passage of time due to various developments or legal complications, can be sorted out if an election is held in an appropriate manner and in accordance with the valid bye-laws. Even the learned Addl. Advocate General, who has appeared on behalf of the State, the Inspector General of Registration and the District Registrar, has submitted that if the election is held and new office-bearers are elected, most of the controversies would become unnecessary.

22. Mr. Chandru, learned Senior Counsel, has submitted that undoubtedly election should be held, but for the said purpose a Special Officer should be appointed as contemplated in the Act and all other defects should not be swept under the carpet.

23. Mr.T.R. Mani, learned Senior Counsel, also to some extent supported Mr. Chandru and submitted that since there has been violation, it can be taken that the Society has become defunct in the eye of law as contemplated under Section 44(3)(b) of the Act.

24. Mr.T.V. Ramanujam, learned Senior Counsel, while submitting that election should be directed to be held immediately, has pressed for ignoring the amendment of the bye-laws made in the year 1992, particularly, those relating to enhancement of fees of different members and has submitted that the persons should be treated as members in the appropriate category as contemplated in the original provisions relating to subscription of membership in various categories.

25. One main dispute is relating to validity of the election held in June, 2001. It has been submitted by Mr.T.R. Mani, Mr.K. Chandu and Mr.T.V. Ramanujam that such election was held on the basis of bye-laws purportedly amended in 1989 by depriving the members of their right of contesting the election on the pretext that such members have not completed 3 years of membership. As per Section 12(3) of the State Act, until the amendment of the bye-laws is registered by the Registrar, such bye-laws would not be effective. Moreover, no bye-laws would be

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effective if such bye-laws are against the provisions contained in the Act. In above view of the matter, the provisions contained in the bye-laws of 1989 to the effect that in order to contest, a person should have been a member for 3 years was ineffective inasmuch as such bye-laws had not been registered at the time when the election was held in June, 2001.

26. Even though we have arrived at the aforesaid conclusion, the fact remains that the elections after 1989 had been held on the basis of such amendment and merely because certain persons were not able to contest the election, did not render the Executive Committee invalid or non est during those years. The particular candidate, whose nomination has been rejected for contesting the election on the ground that he was not a member for 3 years or more, could have challenged the election in the manner known to law, but in the absence of any valid challenge, the elected Committee cannot be characterised as non-existent or non-est in law.

27. Lot of controversies have been raised regarding the manner of selection of the Trustees. Some of the office bearers are designated as Ex-Officio trustees. Apart from the above, as per 1979 bye-laws certain Trustees are also nominated. A reading of Sections 14 and 15 of the Act would leave no room for doubt that the management of the Society has to be vested in a Committee to be elected by all the members of the society. Therefore, there is no scope for having any nominated trustee far less there is any scope for providing that such nominated trustees would become members of the Managing Committee. Apart from the above contradiction between 1979 bye-laws and the provisions contained in the Act, the fact remains that such 1979 bye-laws had not been registered. Therefore, there is no scope for holding that any person could be nominated as Trustee nor it can be held that the nominated trustee can hold office for six years, because the Act is very categorical that the members of the Managing Committee should hold office for three years.

28. In view of the above analysis, it is apparent that all the office bearers must be elected and not by any other method and no member of the Committee can hold office for more than three years, though there is no embargo for re-election any number of times.

29. A submission was made by Mr.T.R. Rajagopalan, the learned Senior Counsel, for the Music Academy that even assuming 1979 Memorandum of Association / bye-laws had not been registered and therefore were not applicable, the bye-laws which were in existence prior to 1979 should hold the field. Learned Senior Counsel has referred to amended bye-laws which were purportedly amended in the year 1975. Mr.T.V. Ramanujam, learned Senior Counsel appearing for R.Parthasarathy, has objected vehemently to such submission by contending that in the pleadings the Music Academy had never referred to any bye-laws of 1975, and, therefore, no reliance can be placed on such so called bye-laws. He has

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further submitted that at any rate such bye-laws were also not registered.

30. To combat such submission, learned Senior Counsel appearing for the Music Academy has submitted that as per 1860 Act, there was no requirement for registration of the bye-laws. To find out as to whether bye-laws of 1975 was in existence, when the Act came into force, we had requested the learned Addl. Advocate General to obtain necessary instructions. However, the learned Addl. Advocate General has submitted that the records available with the District Registrar do not indicate regarding any bye laws of 1975. Since there is no categorical material on record regarding the existence of bye-laws of 1975, it is unnecessary to deal with other contention regarding the requirement of registration of bye-laws and similarly there is no necessity to consider the contention raised by Mr.T.V. Ramanujam and Mr. Aravind P. Dattar that bye-law, if any, must be consistent with the Memorandum of Association as per Clause 18 of the Rules and Regulations of 1929.

31. In course of hearing, however, it has been accepted by all concerned that certain bye-laws had been amended in the year 1953. It provided for election of four or more Vice Presidents, two or more Joint Secretaries and twelve other members. Since there is no real dispute about existence of such bye-laws, recourse can be had to such bye-laws for holding the elections. From the Memorandum of Association and the Rules and Regulations of 1929 as well as bye-laws of 1953, it is evident that the following office bearers are to be elected, namely, one President,four Vice Presidents, two Trustees, four Joint Secretaries, one Treasurer and twelve other Members. It is of course true that 1979 bye-laws provided for election of more number of office bearers and also provided that some of the Trustees are to be nominated. However, since such bye-laws, which were passed after 1975 Act came into force, had not been registered as contemplated under Section 12(3) of the Act, this Court cannot give any direction for holding election by taking into account such bye-laws. It is thus made clear that election of the office bearers shall take place in accordance with 1929 Memorandum and the Rules and Regulations as supplemented by 1953 bye-laws regarding number of office bearers to be elected.

32. Some controversies have been raised, more particularly by Mr. Aravind P. Dattar, Senior Counsel, that the Bye-Laws providing for more number of office-bearers than contemplated in Memorandum of 1929 cannot be held valid. The Memorandum is supposed to reflect the aims and objects of the society and the basic provisions. The details regarding the organisation of the society are expected to be reflected in the Rules and Regulations and the Bye Laws. Therefore, increase in the number of members of the Committee, as contemplated in the subsequently amended Bye Laws, cannot be held to be inoperative on that score. Since the Central Act of 1860 did not specifically contemplate any registration of amendment of bye laws, the subsequent Bye Laws of 1953 can be followed.

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33. Lot of controversies had been generated regarding the powers given to the Trustees as per 1979 bye-laws. Since bye-laws of 1979 had not been registered, there is no question of following any such bye-laws in the matter relating to power of the Trustees and such Trustees had to act obviously under the control of the Executive Committee as contemplated in 1929 Memorandum of Association and the Rules and Regulations.

34. A question may arise as to members who would be entitled to participate in the election. As per Section 14 of the Act, the Society is required to maintain a register containing the names, addresses and occupations of its Members. As per Rule 16 of the Tamil Nadu Societies Registration Rules, 1978, the register of members is required to be in Form No.VI. As per Rule 17(2), a notice of any change among the members of the society or of the committee shall be filed in Form No.VII within three months from the date of such change. It is of course true that the communication regarding change of members (by way of addition or deletion) is required to be made within three months from the date of such change. However, there is no provision in the Act or in the Rules that such change would not be recognised unless it is approved by the Registrar of Societies. It is already noticed that under Section 12(3) an amendment of the memorandum or the bye-laws is required to be registered and only on such registration, such amendment takes effect, of course from the date of passing of special resolution. Under Section 12(4), the Registrar is required to be satisfied that amendment of any bye-law is not contrary to the Act or the Rules made thereunder and thereupon he is to register the amendment and he is required to issue copy of the amendment certified by him, which shall be conclusive evidence that the amendment has been duly registered. However, there is no such requirement regarding approval or recording of satisfaction in relation to changes of membership. Even though the Music Academy has not sent the names of the members within the stipulated period, there is no dispute that subsequently such communication has been made and in Form VII, names have been sent. Mercifully, in course of hearing, no dispute whatsoever has been raised regarding the names of the members. Therefore, on the basis of such names, which have been sent to the Registrar, the election has to take place.

35. Contentions have been raised in the writ petitions filed by R. Parthasarathy and N. Kuppuswami Chetti that election on 24.6.2001 having been held on the basis of the amended bye-laws of 1989 and the names of the office bearers having not been communicated to the Registrar within three months as required, it should be held that there was no Executive Committee. As already held, the provision in 1989 bye-laws could not have been followed for holding the election and on that basis, nomination of some of the candidates should not have been rejected. However, illegal or erroneous rejection of nomination of some

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of the candidates would not make the entire election ipso facto void and the person, whose nomination had been illegally or erroneously rejected, could have challenged the election in a manner known to law. In the absence of any challenge, it must be taken that the persons elected were duly elected as there is no scope for challenging such election in a collateral proceeding. Moreover, in view of the provisions contained in Section 55 of the Act to the effect that no act or proceeding of the society or any committee shall be deemed to be invalid merely on the ground of any defect in the organisation of the society or the formation of the general body or the constitution of the committee and on the ground of any defect or irregularity in the election or appointment of a member of the committee, notwithstanding some defects in the election of some of the members, it must be held that the Executive Committee had been validly elected and the act or proceedings of the Society or the Committee cannot be impugned.

36. The contention to the effect that the Trustees could not have been given a superior role vis-a-vis the members of the Managing Committee even though acceptable, does not have any practical effect in nullifying any of the action taken by the Trustees which must be deemed to have been ratified by the Managing Committee. The action taken by the Trustees / Managing Committee can be taken to be valid in view of the provisions contained in Section 55 of the Act.

37. A contention has been raised that the Committee if at all taken to be constituted properly had tenure for 3 years and, therefore, it had no right to continue the office beyond 3 years in view of the specific provision contained in Section 15(4) of the Act that the term of office of the members of the committee shall not exceed three years from the date of their appointment. However, it is apparent that when the Committee initiated steps for holding the Annual General Body Meeting, a writ petition had been filed on the ground that the very election of the Committee itself was illegal and, therefore, no action can be taken by such Committee and a restraint order had been passed. Subsequently, by virtue of the interim orders passed by the Court, such Committee was allowed to take certain decisions. Reference has been made by Mr.K. Chandru, learned Senior Counsel, regarding selection of an artist for award. It has been submitted by him that even though the Court made it clear that the Committee should carry on day-to-day affairs and no policy decision should be taken, such a decision was taken by the Committee. Similarly, reference was made regarding the decision taken to hold musical function on 26.12.2005 in aid of Tsunami victims. As already indicated at the threshold, the Music Academy has a fair name not only within Tamil Nadu but in other parts of the country. Internal differences should not diminish the lustre of the Music Academy within and outside Tamil Nadu. In view of the order passed by the Court, possibly it would have been more prudent on the part of the existing Committee not to take any such decisions. However, since such decisions have already been taken and must have been communicated to the

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persons concerned, we hope no further ruckus would be raised on this aspect. However, if any such question persists, it would be always open to the newly elected Committee to consider such matter. It is needless to point out that the newly elected Committee Members would take into account all the relevant facts and circumstances, including the question of fair name of the Music Academy while taking any decision on any of the matter inter-connected with any decision already taken by the existing Committee.

38. The election which we are now directing is on the basis of 1929 Memorandum of Association and the Rules and Regulations as well as 1953 bye-laws. Section 12 contemplates the Memorandum as well as bye-laws can be amended provided such memorandum and bye-laws are not contrary to the provisions of the Act or the Rules made thereunder. Therefore, it goes without saying that it would be always open to the General Body to take appropriate decision regarding any amendment and the fact that the present direction is for holding election based primarily on 1929 Memorandum and the Rules and Regulations and 1953 bye-laws, obviously would not stand in the way of any amendment being effected in accordance with the provisions contemplated in Section 12 of the Act.

39. Certain controversies were raised by Mr.T.V. Ramanujam regarding enhancement of membership fees as per 1992 bye-laws. Since 1992 amendment had not been registered, it is obvious that such amendment was not effective. However, since on the basis of such amendment members have been enrolled on the basis of application of such persons, there is no justification to claim change of status or refund of any excess amount. Such observation is being made keeping in view the larger interest of the Society. Even though the amendment was yet to form part of the bye-laws, the applicant seeking for membership on the basis of such amendment having willingly paid the fees, cannot now turn around and say that either the excess amount paid should be refunded or he should be considered as a member of different class. In order to avoid any further controversy in the matter, it is advisable for the Society to incorporate a fresh amendment or take steps for registration of the existing amendment, if otherwise permissible in law.

40. A contention has been raised in the writ petition filed by N. Kuppuswami Chetti that the Society must be taken to be defunct as the various provisions in the Act and the Rules have not been complied with. The provisions contained in the Act, more particularly Section 44 of the Act, do not envisage that a Society becomes automatically defunct on account of the violations. Necessary orders are to be passed by the appropriate authority after issuing proper notice and after arriving at appropriate conclusion. Since there is no provision making the society automatically defunct and since a direction is being issued for holding the election, we do not think there is any necessity to consider such submission made by one of the Members of the Society, who incidentally

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himself was elected as a Vice President in June, 2001. Accepting such a submission obviously would not be in the wider interest of the Music Academy. The contention has the appearance of being inspired by the idiomatic phrase "cut the nose to spite the face".

41. Last but not the least comes two crucial questions, one relating to the prayer for quashing the show cause notice issued under Section 34-A and the other relating to the report of the Registrar calling upon the Society to remove the deficiencies/defects.

42. So far as 34-A of the Act is concerned, such provision relates to supersession of the Committee. Under the aforesaid provision, action can be taken by the Government for supersession of the Committee of the Society if such Committee is not functioning properly or the affairs of the Society are mismanaged or the society's activities are not in furtherance of the objects of the society or the Committee has contravened any of the provisions of the Act or the Rules made thereunder or wilfully disobeyed or wilfully fails to comply with any lawful order or direction issued under the provisions of this Act or the Rules made thereunder. Before taking any such action, the Government is required to give an opportunity to the Committee to make its representation.

43. In the present case, the notice was issued by the Government as required under Section 34-A(1). However, at that stage, the Music Academy as well as some of the Members of the Committee have approached the court, and therefore, such proceeding has remained in doll-drums. As per Section 34-A, when the Government takes a decision to supersede the Committee, a Special Officer is required to manage the affairs of the Society for a specified period not exceeding one year. As per Section 34-A(4), the Special Officer so appointed is obliged to arrange for constitution of a new Committee in accordance with the provisions of the Act. The normal term of the Committee has come to an end and as per the present direction, election is directed to be held under the direct control of a retired Judge of the High Court to be assisted by an officer to be nominated by the Government. In such view of the matter, we do not feel that any useful purpose would be achieved in continuing the enquiry. As a matter of fact, the learned Addl. Advocate General in course of his submission has fairly submitted that if directions are issued for holding election, there may not be any necessity for appointing a Special Officer as the main intention of the Government was to set right the organisation and bring the same back to the tracks as the organisation had been derailed. During pendency of the writ petitions the Music Academy/Executive Committee had submitted certain explanations and papers as well as application under Section 54 of the State Act. Such papers/application have been returned by the State on the ground that the writ appeal and other writ petitions are pending. Now that the matters are being disposed of, the State would consider all the aspects and may suggest any remedial measures so that

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the deficiencies would not recur in future. However, since a new Executive Committee would be elected by virtue of the present order, we do not feel any real necessity for taking any action for supersession of the Committee on the basis of the show cause notice.

44. So far as the action taken by the Registrar under Section 36(9) is concerned, as observed by the learned single Judge, the Music Academy should comply with the directions issued by the Registrar. It can only be observed that some of the matters have really become redundant and it is stated that in respect of many of the matters, remedial action has already been taken by the members of the Committee. Since the State is required to consider the application under Section 54 of the State Act, the remedial measures taken or to be taken by the newly elected Executive Committee can be examined by the appropriate authority after disposal of the application under Section 54.

45. In the light of the aforesaid discussions and in the interest of justice and more particularly in the larger interest of the Music Academy, our conclusions and directions are as follows :-

(i) As per the provisions contained in the Act, management of a Society has to vest in a Governing body or a Managing Committee consisting of elected members and the term of such elected members cannot exceed three years. Therefore, there is no question of any bye-law providing term of six years for any Trustee.

(ii) As per the provisions of the Act, the Governing Body/Committee can consist of only elected members. Therefore, the question of having any nominated Trustee in the Governing Body/Committee cannot arise, as any such provision would be contrary to the provisions of the Act. The Trustees are also required to be elected.

(iii) Show cause notice has been issued primarily for the purpose of superseding the Committee. As submitted by most of the Counsels, including the learned Additional Advocate General, most of the troubles afflicting the Music Academy can be set right by holding a election for the Committee.

(iv) In the peculiar facts and circumstances of the case, we feel that election must be held under the direct control of an independent Observer. For the aforesaid purpose, we nominate Justice K.P. SIVASUBRAMANIAM, Retired Judge of this Court, under whose control and direction the election shall take place. However, all the ancillary and necessary steps to hold the election in an orderly manner shall be taken up by an officer not below the rank of Additional Inspector General of Registration, who shall act under the control and direction of the Observer. Necessary secretarial facility is to be arranged by the Music Academy. If such arrangement is required to be made by the Observer or the Officer deputed by the Government, necessary expense is to be borne

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by the Music Academy. The State Government shall nominate without fail an appropriate officer within three days from the date of this direction.

(v) Necessary notice to various members of the Music Academy shall be issued by the Officer deputed by the Government as per the direction of the Observer from time to time. As per the provisions contained in the Act, 21 days notice is required.

(vi) The election should be held on or before 31st October, 2005.

(vii) Honorarium of Rs.50,000/- is to be paid by the Music Academy to the Observer. Other incidental expenses shall be borne by the Music Academy.

(viii) Members of the Committee, who are presently in charge, either by virtue of various interim orders or otherwise are directed to co-operate with the Observer and the Officer to be deputed and are directed to act as per the direction issued by the Observer/Officer from time to time. All documents required by the Observer/Officer shall be made available by the members of the Committee. It would be open to the Observer or the Officer to consider any application made by any member for inspection of any records pertaining to the Music Academy and more particularly relating to names of the members.

(ix) The Trustees or other members of the Committee shall not interfere in the matter relating to holding of election. The day-to-day management shall be carried on by the members of the Committee, but the Trustees will have no overriding say in the matter. It is made clear that except to carry on the routine work, no special function shall be held in the meantime nor any policy decision shall be taken by the Committee members/Trustees without the explicit permission from the Court. The bank accounts shall be operated by the office bearers concerned with the permission and under the supervision of the officer to be deputed by the State Government. Such officer should deal with such matters within three days from the date of request made on this behalf.

(x) Since there is no serious dispute about the names of the members of various types already indicated in the Form VI and VII, the election shall be on the basis of such Form, which had been belatedly filed.

(xi) The restriction imposed in 1989 bye-law to the effect that a member in order to be eligible to contest must be a member for three years would not be applicable.

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(xii) The election shall be for the following Office bearers :-

(1) one President (2) Four Vice-Presidents (3)Two Trustees (4) Four Joint Secretaries (5) one Treasurer, and (5) Twelve other members. No subordinate court shall entertain any pre-election dispute.

(xiii) Any dispute regarding nomination or any other matter in course of the election would be decided by the Observer.

46. With the above directions and observations, W.A.No.1078 of 2003, W.P.Nos.11415, 17299, 17341, 14950, 14951, 17055 of 2003 and 24183 of 2004 are disposed of. Consequently, the connected miscellaneous petitions are closed. No costs.

dpk 23.9.2005

The Writ Appeal and Writ petitions having been taken for "Being Mentioned" on this day (ie on Monday, the twenty Sixth day of September 2005(26.9.2005) in pursuant to the order of this Court dated 23.9.2005 and made herein in the presence of the aforesaid Advocates on eitherside, the Court made the following order:-

PKMJ & NKJ

The matter is being taken on being mentioned. It is stated by the learned Additional Advocate General that one post of Additional Inspector General of Registration is lying vacant. Therefore he requests that instead of Additional Inspector General of Registration, Deputy Inspector General of Registration not connected in any manner with the dispute may be nominated. Such prayer is accepted and the direction given in the judgement is accordingly modified. Therefore, the Government is directed to nominate a Deputy Inspector General of Registration not connected with the dispute.

26.9.2005

The Writ Appeal and Writ Petitions having been listed on " being mentioned" on this day (ie on Monday the third day of October 2005 (3.10.2005) in pursuant to the orders of this Court dated 23.9.2005 & 26.9.2005 and made herein in the preesence of the aforesiad Advocates on eitherside, the Court made the following order:-

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(Judgement delivered by PKMJ)

This matter has been listed on "being mentioned" by the learned Additional Advocate General. It is stated by him that a schedule has been drawn underwhich the date of election has been re-fixed on 6th November'2005 and thereafter counting shall take place. In such view of the matter, the judgement is modified and the time for completion of election process is extended till 10th November'2005.

03.10.2005

cs/ssm

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government of Tamil Nadu,
   Commercial Taxes Department,
   Fort St. George, Chennai 9.

2. The Inspector General of Registration,
   Santhome High Road,
   Chennai 600 028.

3. The District Registrar of Audit and Enguiry Officer,
   Chennai Central, Chennai 1.

4. The District Registrar of Societies,(Central)
   No.20, Seethammal Road, Alwarpet, Chennai 18.

5. The Hon'ble Mr.Justice K.P.Sivasubramaniam, (Retd Judge) No.46
   Pullah Avenue, Shenoy Nagar, Chennai 30 (though Circulation)

+ 1 cc to Mr.T.V.Krishnamachari, Advocate SR no.41355

+ 1 cc to Mr.T.Mohan, Advocate SR No.41285

+ 1 cc to the Government Pleader SR No.41391

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DATED : 3.10.2005

ORDER

WRIT APPEAL NO.1078 OF 2003
and
W.P.No.11415, 17299,
17341,14950, 14951, 17055 of
2003
& 24183 of 2004

Giving directions etc., as stated within.

SR/5.10.2005

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